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PART VI:

ENVIRONMENTAL PROTECTION AGENCY

■

PROCUREMENT OF PRODUCTS THAT CONTAIN RECYCLED MATERIAL AND RESOURCE RECOVERY FACILITIES

Guidelines for Federal Agencies

Title 40—Protection of Environment

[FRL 451–5]

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 247—GUIDELINES FOR PROCUREMENT OF PRODUCTS THAT CONTAIN RECYCLED MATERIAL

Increased Usage of Recycled Materials in Products Purchased by Federal Agencies

These guidelines are intended to increase usage of recycled materials in products purchased by Federal agencies. The increased usage of recycled materials will act to conserve virgin natural resources, reduce solid waste generation, and conserve energy used in the manufacturing of those products. Increased demand for recycled materials will improve the marketability of such material and improve the economic viability of resource recovery from solid waste.

The direct market creation effect of Federal purchasing of waste-based products would probably be small when considered in the aggregate. Although the Federal Government is a large single consumer, Federal expenditures only represent a small fraction of combined industrial, commercial, and personal expenditures in most areas. However, Federal procurement specifications and procurement practices are widely circulated and duplicated by State and local governments and some industries. Therefore, modification of Federal procurement practices could result in more widespread utilization of recycled materials in other sectors as well. Moreover, Federal purchasing may well have a significant impact on recycled materials demand in localized markets.

These guidelines will attempt to stimulate the use of recycled material by: (1) recommending the removal of restrictions that prevent greater use of recycled material in products; (2) recommending recycled material to be included in products; (3) ascertaining that performance criteria established for products are not overly restrictive and do not arbitrarily exclude recycled material; and (4) recommending that the components of recycled material that are the most difficult to market, i.e., post consumer waste, receive the greatest stimulus.

The Guidelines are being promulgated under the Administrator's inherent authority to issue advisory, nonprescriptive guidelines which, in his view, further the broad intents and purposes of the Solid Waste Disposal Act of 1965 (Public Law 89–272) as amended. Compliance with the guidelines is voluntary. It is EPA's intent to revise these guidelines from time to time.

Background. The use of Federal leverage as a tool to stimulate demand for recycled materials has been cited in several authoritative sources. Section 205 of the Solid Waste Disposal Act, as amended, mandated the Administrator to

> carry out an investigation and study to determine * * *
>
> (4) the use of Federal procurement to develop market demand for recovered resources * * *

Section 101(b)(6) of the National Environmental Policy Act of 1969 mandated the Federal Government to:

> * * * use all practicable means consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may * * *
>
> (6) enhance the quality of renewable resources and approach the maximum obtainable recycling of depletable resources.

Chapter 4D.6 and 4D.7 of the final report of the National Commission on Materials Policy recommended that:

> * * * the Federal Government exercise leadership by using its purchasing power to provide a market for products made from recycled materials.
>
> * * * the Federal Government help reduce the flow of solid waste by establishing, within Federal purchasing departments, performance standards rather than composition standards that discriminate against secondary materials.

The following studies were carried out in compliance with Section 205(a)(4) of the Solid Waste Disposal Act as amended: *Can Federal Procurement Practices Be Used to Reduce Solid Waste,* Arthur D. Little, Inc., Cambridge, Massachusetts; *Study of the Feasibility of Requiring Secondary Materials in Federal Construction,* Resource Planning Associates, Inc. Cambridge, Massachusetts and *Study of the Feasibility of Federal Procurement of Fuels from Solid Waste,* Arthur D. Little, Inc., Cambridge, Massachusetts. The data in these studies along with the recommendations of the National Environmental Policy Act and of the National Commission on Materials Policy cited above were analyzed to determine the policies, procedures, and restrictions that prevent increased use of recycled materials. One significant finding was that, in general, purchasing specifications constitute a barrier to increased resource recovery because recycled materials are often excluded. EPA also analyzed markets for recycled materials and found that such markets could be stimulated by increasing demand for recycled materials through the specification of recycled materials content in products.

In addition, the President, in his 1971 Environmental Message to Congress, directed the General Services Administration to purchase paper that contained recycled material. The program instituted by the General Services Administration resulted in the widescale use of recycled fiber in Federally purchased products and acted to increase the demand for recycled paper. These guidelines are an extension of the General Services Administration program and they are intended to stimulate the demand for other recycled materials in much the same way.

Contents of the Guidelines. These guidelines recommend the inclusion of a certain percentage of recycled material in products purchased by the Federal Government, and that the maximum practicable level of recycled material content be specified. These guidelines do not suggest that specification drafters or procurement officials undertake massive testing programs, but rather that they use the existing data available from industry, standards and testing institutions, governmental agencies, and other sources to determine applicable products and attainable levels of recycled materials content. As more data becomes available, more specifications can be modified.

In specifying maximum attainable levels, agencies should consider (a) product performance characteristics, (b) recycled material supplies, and (c) material and product costs. In addition, it may be impractical for specifications to list the recycled material content in every component of a multi-component or multi-materials product or for other products, because their specification of recycled material content of these products would not be appropriate. However, there are a large number of Federally purchased products for which specification of recycled material content could readily be implemented.

These guidelines make no distinction between real property and personal property. In addition to products procured as personal property, it is intended that these guidelines apply to the specifications used by agencies in the procurement of real property, the products used in the construction of real property and the products used in the maintenance and repair of real property.

The specifications that these guidelines refer to are those specifications for products that are developed and written by individuals within the Federal Government. The specifications may require specific materials or performance characteristics or may require both. Specifications that are used by Federal agencies but developed and written by individuals outside the Federal establishment (ASTM, ANSI, etc.) should not come under the auspices of these guidelines.

Costs. Practices recommended by the guidelines are expected to be no more costly than existing procurement practices in the long term. Implementation of the guidelines' recommendations may be economically impracticable under isolated circumstances, and it is assumed that under those circumstances the recommendations would not be followed.

The economic and inflationary impacts of the guidelines have been carefully evaluated. It has been determined that the effects will be minor and that the guidelines are not a "major action" requiring an inflation impact statement as prescribed by Executive Order 11821 and OMB Circular A–107.

Response Requested. The EPA solicits comment on these guidelines. In that the material contained herein is a matter relating to non-prescriptive guidelines and that the persons who would have been

affected by these guidelines if they were mandatory have received actual notice of the guidelines, and have commented on these guidelines, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

In accordance with the spirit of the public policy set forth in 5 U.S.C. 553, interested persons may submit written comments, suggestions, data or arguments in triplicate to the Deputy Assistant Administrator for Solid Waste Management Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460. Material thus submitted will be evaluated and will be considered prior to making any changes. Until such time as further changes are made, the provisions as set forth in these guidelines shall remain in effect.

Receipt of comments will be acknowledged, but the Deputy Assistant Administrator for Solid Waste Management Programs will not provide substantive responses to individual comments. All comments will be available for public inspection at the Freedom of Information Center at EPA Headquarters, 401 M Street, S.W., Washington, D.C. during normal business hours.

Pursuant to the authority of the Administrator to issue advisory, nonprescriptive guidelines under the Solid Waste Disposal Act of 1965 (Pub. L. 89–272) as amended by the Resource Recovery Act of 1970 (Pub. L. 91–512), the following Part 247 is added to 40 CFR Chapter I.

Dated: January 9, 1976.

RUSSELL E. TRAIN,
Administrator.

Part 247 is added to read as follows:

Subpart A—General Provisions

Sec.

247.100 Scope.
247.101 Definitions.

Subpart B—Recommended Procedures

247.200 Specifications.
247.200–1 Recommended procedures: specification review.
247.200–2 Recommended procedures: consultation.
247.201 Procurement.
247.201–1 Recommended procedures: procurement procedures.
247.202 Solid-waste-derived-fuel.
247.202–1 Recommended procedures: procurement of solid-waste-derived-fuel.

Subpart A—General Provisions

§ 247.100 Scope.

(a) Compliance with the procedures recommended in these guidelines is not mandatory for Federal agencies. These procedures are recommended to Federal, State, Interstate, Regional and Local Governments and private business and institutions for the review of specifications and the procurement of products.

(b) These guidelines recommend procedures that can bring about the increased use of recycled material in personal and real property procured by Federal agencies if the recommendations contained herein are adopted by parties preparing specifications for products to be procured and by parties purchasing these products.

(c) The "Recommended Procedures" contained herein delineate actions that Federal agencies should use to ascertain that the specifications they are responsible for, and the procurement actions that they take, will bring about the increased use of recycled material.

(d) These guidelines should be applicable to all Agencies that draft specifications for products or procure products using those specifications, or both. Agencies that procure products using specifications that are formulated by the Federal Government should procure those products using the recommendations contained in these guidelines at all levels of procurement. These guidelines should also apply to products procured by contractors when the controlling agency drafts the specifications used by the contractor. These guidelines should not be applied to the procurement of products that are purchased using specifications that are not drafted by Federal agencies.

(e) The Environmental Protection Agency will render technical assistance and other guidance to Federal agencies when requested to do so pursuant to Section 3(d)1 of Executive Order 11752.

§ 247.101 Definitions.

As used in these guidelines:

(a) "Fixed source" means, for the purpose of these guidelines, a stationary facility that converts fossil fuel into energy, such as steam, hot water, electricity, etc.

(b) "Material specification" means a specification that stipulates the use of certain materials to meet the necessary performance requirements.

(c) "Performance specification" means a specification that states the desired operation or function of a product but does not specify the materials from which the product must be constructed.

(d) "Personal property" means any property that is not real property and that is movable or not attached to the land. Personal property can be a single or multi-component or multi-material product.

(e) "Post consumer waste (PCW)" means a material or product that has served its intended use and has been discarded for disposal after passing through the hands of a final user. "Post consumer waste" is a part of the broader category, "Recycled material."

(f) "Real property" means any property that is immovable and attached to the land.

(g) "Recycled material" means a material that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from post consumer waste, industrial scrap, material derived from agricultural wastes and other items, all of which can be used in the manufacture of new products.

(h) "Responsible agency" means a department, agency, establishment or instrumentality of the executive branch of the Federal Government or the organizational element within such responsible agency that has the primary responsibility for procurement of materials or products or the preparation of specifications for the procurement of materials or products.

(i) "Solid waste" means garbage, refuse, sludges, and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flow, or other common water pollutants.

(j) "Solid-waste-derived fuel" means a fuel that is produced from solid waste that can be used as a primary or supplementary fuel in conjunction with or in place of fossil fuels. The solid-waste-derived fuel can be in the form of raw (unprocessed) solid waste, shredded (or pulped) and classified solid waste, gas or oil derived from pyrolyzed solid waste, or gas derived from the biodegradation of solid waste.

(k) "Specification" means a clear and accurate description of the technical requirement for materials, products or services, which specifies the minimum requirement for quality and construction of materials and equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references.

(l) "Virgin material" means a raw material used in manufacturing that has been mined or harvested and has not yet become a product.

Subpart B—Recommended Procedures

§ 247.200 Specifications.

§ 247.200–1 Recommended procedures: specification review.

(a) All agencies that have the responsibility for drafting or reviewing specifications for products procured by the Federal Government should review those specifications and ascertain whether recycled materials are excluded from the specifications. All specifications with exclusions should be rewritten without the exclusion, unless performance standards would not be satisfied.

(b) Any statement in a specification that requires the product to be manufactured from virgin materials should be eliminated, unless performance standards would not be satisfied.

(c) All agencies should revise specifications used in purchasing personal and real property so that all specifications require the inclusion of recycled material to the maximum extent practicable.

(d) All specifications should be revised if the performance requirements are so stringent that they arbitrarily exclude products that contain the maxi-

mum practical amount of recycled materials.

(e) The review process should be completed at the next specification review or at the time of the next major procurement action.

(f) Specifications should require the recycled material contained in the products to be post-consumer waste whenever practicable or that the recycled material specified contain the highest percentage of post-consumer waste that is practicable.

(g) If the inclusion of recycled material to the maximum extent practicable as in paragraph 247.200–1(c) cannot be determined by the specification writer, then the specification should encourage manufacturers to include recycled material to the maximum extent that will still allow the product to meet the performance standards required.

§ 247.200–2 Recommended procedures: consultation.

The determination of practicable percentages of recycled material to be contained in a product should be established by consultation with the Bureau of Standards of the U.S. Department of Commerce, American Society of Testing and Materials Engineers (ASTM), other appropriate groups who are involved with product performance standards, the U.S. Environmental Protection Agency, and through appropriate literature review and testing.

§ 247.201 Procurement.

§ 247.201–1 Recommended procedures: procurement procedures.

(a) Within the constraints of the specification recommendations stated in § 247.200–1 (a) through (g), and applicable Federal procurement laws and regulations procurement officials should give preference to the selection of products containing the highest percentage of recycled material.

(b) Procurement agents should require that vendors certify the recycled material content, specifically identifying the percentage of post consumer waste and other recycled material that is in the product. The certification should be in the form of a label on the product or a statement verified by the vendor attached to the bid documents.

(c) The certification on multi-component or multi-material products should verify the percentage of post consumer waste and recycled material contained in the major constituents of the product.

§ 247.202 Solid-waste-derived fuel.

§ 247.202–1 Recommended procedures: procurement of solid-waste-derived-fuel.

Agencies that generate heat, mechanical, and/or electrical energy from fixed source fossil fuel systems that have the technical capability of using solid-waste-derived-fuel as a primary or supplementary fuel should use solid-waste-derived-fuel to the maximum extent practicable.

[FR Doc.76–1241 Filed 1–14–76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 451–4]

[40 CFR Part 245]

SOLID WASTE MANAGEMENT GUIDELINES

Resource Recovery Facilities

Background.—The Solid Waste Disposal Act of 1965 (Pub. L. 89–272) was amended in October 1970 by the Resource Recovery Act (Pub. L. 91–512). Section 209 of the amended Act requires the Administrator of the U.S. Environmental Protection Agency (EPA) to "recommend to appropriate agencies and publish in the FEDERAL REGISTER guidelines for solid waste recovery, collection, separation, and disposal systems (including systems for private use), * * * ." Further, section 211 mandates that Federal agencies having jurisdiction over solid waste disposal activities "shall insure compliance with the guidelines recommended under section 209 and the purposes of [the Solid Waste Disposal Act] * * * ."

On August 14, 1974, "Thermal Processing and Land Disposal of Solid Waste Guidelines" were published in the FEDERAL REGISTER (39 FR 29328) as the first set of guidelines that were promulgated in fulfillment of the requirement for guidelines on disposal systems.

The EPA now proposes the following guidelines as part of the Agency's efforts to fulfill the Administrator's obligation for guidelines in the area of recovery systems. The EPA recognizes that section 209 expressly mandates that guidelines "shall be revised from time to time," and it intends to revise and supplement these guidelines in the future.

Section 211 of the Act and Executive Order 11752 make the "Requirements" section of the guidelines mandatory upon Federal agencies. The recommendatory sections of the guidelines present methods and techniques which amplify or supplement the mandatory requirements. In other words, the recommendatory sections contain desirable, but not essential, procedures useful for attaining the purposes of the Act.

As provided in section 211 of the Act and section 3(a) of Executive Order 11752, heads of Federal agencies are ultimately responsible for determining which facilities under their jurisdiction shall comply with the guidelines. Pursuant to its authority in section 3(a) of EO 11752, EPA has required that failure to comply with the guidelines must be justified in a report to the Administrator and the public. The specific requirements for such report can be found in the "Scope" section of the guideline.

Practices required by the guidelines are expected to be no more costly than existing solid waste management practices in the long term. Implementation of the guideline requirements may be economically impracticable under isolated circumstances. However, the legislative history indicates that even where guidelines implementation costs more, budget restrictions do not constitute a sufficient excuse to prevent compliance with the guidelines and that Federal agencies have a responsibility to request sufficient appropriations from Congress necessary to manage solid waste properly as part of their normal operating expenses.

The economic and inflationary impacts of these guidelines have been carefully evaluated. It has been determined that the effects will be minor and that the guidelines are not a "major action" requiring an inflation impact statement as prescribed by Executive Order 11821 and OMB Circular A–107.

The legislative history concerning section 211 of the Resource Recovery Act of 1970 indicates that the Congress intended that Federal agencies should take a leadership role in solid waste management, as indicated by the following quote from page 15 of Senate Report No. 91–1034, Senate Committee on Public Works, 91st Congress, 2nd Session, (1970),

> Federal agencies are inclined to place important environmental quality control functions in a subordinate role to their mission. This is no longer appropriate or acceptable.
>
> Federal agencies which generate volumes of waste have a correlative responsibility to request appropriations from Congress necessary to properly manage such waste as part of their normal operating expenses. The public will not tolerate the excuse that budget restrictions prevent compliance with waste management standards and guidelines; it is abundantly clear that the provisions of the environmental control laws do not permit the same excuse to be advanced by individuals or private organizations. Federal agencies must take the lead in overcoming the reluctance to invest funds necessary to control solid waste pollution.

Each Federal agency carries out a wide variety of activities, each with associated policy and economic considerations. In view of these diverse situations, EPA cannot require agencies to carry out specific actions. Instead, the EPA is better equipped to set objectives in the guidelines, allowing each agency to determine for itself the means of accomplishing these objectives by utilizing information provided in the recommended procedures and in the recommended bibliography and by utilizing technical assistance provided by the EPA.

INTRODUCTION

Intent.—These guidelines are intended to provide requirements and recommended procedures for the establishment and utilization by Federal agencies of facilities to recover resources from residential, commercial, and institutional solid waste, and to recommend the establishment and utilization of these facilities to State, interstate, regional, and local governments. Utilization of these resource recovery facilities will result in conservation of resources and in a reduction in the amount of solid waste that requires disposal.

Technology.—There are several systems for recovering materials and energy from solid waste, and these are in various stages of development. The Environmental Protection Agency is participating in the full scale demonstration of several resource recovery technologies under the authority of section 208(a) of the Solid Waste Disposal Act, as amended. Many communities are designing and building systems patterned after these demonstrations. There is a significant amount of research, development, and system implementation in this field on the part of private industry, universities, States, municipalities, and the Federal Government. For detailed discussions of the technologies involved, see the recommended bibliography at the end of these guidelines.

These guidelines do not recommend specific technologies or systems for the recovery of materials or energy because no one system is best under all circumstances. Many different approaches to recovering the energy and materials value from solid waste are presently being examined in a wide variety of communities throughout the country. Not until the investigations recommended in these guidelines have been completed in a thorough manner can a community, jurisdiction, or other appropriate entity, considering its disposal and market situation, decide which method will be of greatest benefit. EPA is producing a Resource Recovery Implementation Guide that will assist agencies in determining the feasibility of implementing resource recovery, in making the system selection decision, in procuring the selected system, and in marketing the output products. This guide will be available before the final guidelines are published in the FEDERAL REGISTER.

Compatibility of Guidelines.—There is some overlap in the coverage between these guidelines for resource recovery facilities and the "Source Separation for Materials Recovery Guidelines" proposed by EPA on September 17, 1975 (40 FR pp. 42986–42990). Specifically, the newspaper, corrugated, and high grade papers could either be source separated for recycling or recovered as energy at a centralized resource recovery facility.

It is the intent of EPA that preference be given to the source separation of paper for recycling for the following reasons:

> (1) In general, the separation and recycling of high grade paper from offices and corrugated containers from commercial establishments will result in a net savings to the Federal Government.
>
> (2) It is desirable that the Federal Government take a leadership role in the demonstration of techniques for the source separation of paper. This is particularly important because increases in industrial capacity to use wastepaper have been constrained by the uncertainty of acquiring supplies of material from the waste stream.
>
> (3) Recycling of paper as a fiber results in greater energy savings than direct burning of paper for conversion into energy.

Following source separation of paper, the remaining wastes should be processed in centralized resource recovery facilities as required in these guidelines. Even with removal of these categories of paper, processing facilities for the remaining waste will generally be economically feasible.

If there are circumstances where significant cost savings over source separation and recycling of paper can be achieved by recovery of high grade papers, corrugated containers, or newspapers in centralized facilities or by con-

version of these materials into energy, then a Federal facility may choose this form of recovery instead of source separation. The analysis supporting this conclusion shall be made available to the Administrator.

Interpretation of Minimum Tonnage.—These guidelines require all Federal facilities that generate, collect, or dispose of 100 tons or more of solid waste per day to establish or utilize resource recovery facilities. It should be noted that this tonnage figure is intended to indicate the level above which the establishment of a resource recovery facility should be investigated. It is not the intent of these guidelines to require Federal agencies to build resource recovery facilities in unreasonably uneconomical situations. Federal facilities should attempt to utilize resource recovery facilities in adjacent communities whenever possible. Where this is not possible, it is the intent of the guidelines that a resource recovery facility be established by those Federal facilities that generate sufficient volumes of solid waste for this to be practicable.

Interpretation of Market Availability.—An exception to the requirement to establish or utilize a resource recovery facility may be made where markets for the recovered products are not available. In this context, "not available" means that the prices at which the products are sold, together with the cost of transporting the products to the market place, do not allow the resource recovery facility to be operated at a reasonable cost.

Determination of Economic Practicability.—The legislative history of the Solid Waste Disposal Act, as amended, indicates that it was the intent of Congress that Federal agencies should comply with resource recovery guidelines even when guidelines implementation costs are more than previous solid waste management practices. However, neither the law nor the legislative history indicate how much more cost is tolerable. It is not the intent of EPA that resource recovery systems be built in unreasonably uneconomical situations. Therefore, the guidelines state that an instance in which the costs of implementation are so high as to render compliance economically impracticable constitutes a valid reason for non-compliance. A resource recovery system cost of up to two times the cost of complying with the provisions of the "Thermal Processing and Land Disposal of Solid Waste Guidelines" (40 CFR 240 and 241) or up to two times the price paid for comparable service, if service is handled under contract, is suggested as a "benchmark" to use in judging whether or not to proceed into a resource recovery system.

Where current practices are not in compliance with 40 CFR 240 and 241, the Agency will naturally have to determine costs for compliance with 40 CFR 240 and 241 before it can judge the cost differential for a resource recovery system.

The precedent for incurring additional costs in order to accrue environmental benefits has been clearly established. Section 15(c)(1) of the Noise Control Act (Pub. L. 92–574) requires the procurement of certified low-noise-emission products in lieu of other products if the costs are no more than 125 percent higher. Sections 212G(e) (1) and (2) of the Clean Air Act (Pub. L. 91–604) require the procurement of certified low-emission vehicles in lieu of others if their cost is not more than 150 percent higher and authorize a premium of 200 percent in special instances.

Implementation in a Standard Metropolitan Statistical Area (SMSA).—The guidelines require the establishment or utilization of a single resource recovery facility by all Federal facilities in an SMSA if any one Federal facility in the SMSA generates 50 tons or more of residential, commercial, or institutional solid waste per day and if the total generation of such waste by Federal facilities in that SMSA is 100 tons per day or more. The use of the word "single" is not intended to preclude the establishment of more than one resource recovery facility to be utilized by all Federal facilities in the SMSA when this is the most practical alternative given facility waste generation rates and transportation distances.

Additionally, in an SMSA in which a decision has been made to establish a joint resource recovery project, all agencies within the SMSA should make an independent comparison between the costs of joining the project and the current disposal costs for their individual facilities in the SMSA. If an agency finds that the additional costs and energy usage for a particlur facility in the SMSA is unacceptable, that agency should make an independent judgment not to comply and should report that decision to the Administrator in accordance with § 245.1.00(g).

Response Requested.—The EPA is soliciting comment and advice via this notification in the FEDERAL REGISTER. In particular, the EPA invites comments from Federal and non-Federal agencies.

In addition, the EPA invites public comments, reviews, and critiques of the guidelines. Interested parties may submit written comments ,preferably in triplicate, to the Deputy Assistant Administrator for Solid Waste Management Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460. All comments received on or before February 17, 1976, will be considered.

Receipt of comments will be acknowledged by the Deputy Assistant Administrator for Solid Waste Management Programs. All comments will be available for public inspection at the Freedom of Information Center at EPA headquarters, 401 M Street, S.W., Washington, D.C. during normal business hours.

This notice of proposed guidelines is issued under the authority of section 209(a) of the Solid Waste Disposal Act of 1965 (Pub. L. 89–272), as amended by the Resource Recovery Act of 1970 (Pub. L. 91–512).

It is proposed to add the following new Part 245 to 40 CFR Chapter I.

Dated: January 9, 1976.

RUSSELL E. TRAIN,
Administrator.

Part 245 is proposed to read as set forth below:

PART 245—RESOURCE RECOVERY FACILITIES GUIDELINES

Subpart A—General Provisions

Sec.
245.100 Scope.
245.101 Definition.

Subpart B—Requirements and Recommended Procedures

245.200 Establishment of resoruces recovery facilities.
245.200–1 Requirements.
245.200–2 Recommended procedures: regionalization.
245.200–3 Recommended procedures: Market study.
245.200–4 Recommended procedures: Product recovered.
245.200–5 Recommended procedures: Planning and technology selection.

APPENDIX—Recommended bibliography.

Subpart A—General Provisions

§ 245.100 Scope.

(a) These guidelines are applicable to the recovery of resources from residential, commercial, and institutional solid waste. Explicitly excluded are mining, agricultural, and industrial solid wastes; hazardous wastes; sludges; construction and demolition wastes; and infectious wastes.

(b) The "Requirement" sections contained herein delineate minimum actions for Federal agencies for planning for and establishing resource recovery facilities. Pursuant to section 211 of the Solid Waste Disposal Act, as amended, and Executive Order 11752, the "Requirement" sections of this guideline are mandatory for Federal agencies. In addition, they are recommended to State, interstate, regional, and local governments for use in their activities.

(c) The "Recommended Procedures" sections are presented to suggest additional actions or preferred methods by which the objectives of the requirements can be realized. The "Recommended Procedures" are not mandatory for Federal agencies.

(d) These guidelines apply to all Federal agencies that generate residential, commercial, or institutional solid waste.

(e) The Environmental Protection Agency will render technical assistance and other guidance to Federal agencies when requested to do so pursuant to section 3(d)1 of Executive Order 11752.

(f) Within one year after the final promulgation of these guidelines, agencies shall make a determination as to what actions shall be taken to comply with the requirements of these guidelines and shall, within two months of such determination, submit to the Administrator a schedule of such actions.

(g) Federal agencies that make the determination not to comply with the requirements contained herein, for whatever reason, shall make available to the Administrator the analysis and rationale

used in making that determination. The Administrator may publish notice of the availability of this report in the FEDERAL REGISTER. The following are considered to be valid reasons for non-compliance under individual facts and circumstances: (1) Costs so high as to render compliance economically impracticable; and (2) inability to sell the recovered products due to lack of market.

(i) The following points are to be covered in this analysis:

(*a*) A description of ongoing actions that will be continued and actions taken or proposed that will not be in compliance with these guidelines. This statement should identify all agency facilities that will be affected by actions not in compliance with the guidelines including a brief description of how these facilities will be affected.

(*b*) A description of the alternative actions considered with emphasis on those alternatives which, if taken, would be in compliance with these guidelines.

(*c*) An analysis in support of the action chosen by the agency including technical data, market studies, and policy considerations utilized in arriving at this determination.

In covering the points above, agencies should make every effort to present the information succinctly and in a form easily understood but in sufficient detail so as to give the Administrator and the public an understanding of the factors influencing the decision not to comply with the guidelines.

(ii) This report shall be submitted to the Administrator as soon as possible after a final agency determination has been made not to comply with these guidelines, but in no case later than sixty days after the determination not to comply. The Administrator will indicate to the agency his concurrence/nonconcurrence with the agency's noncompliance decision, including his reasons.

(iii) Implementation of actions not in compliance with these guidelines shall be deferred for 60 days, where feasible, in order to give the Administrator an opportunity to receive, analyze and seek clarification of the report.

(iv) It is recommended that where the noncompliance report concerns an action for which an Environmental Impact Statement is required by the National Environmental Policy Act, that the report be circulated simultaneously with the EIS.

§ 245.101 Definitions.

As used in these guidelines:

(a) "Agricultural solid waste" means the solid waste that results from the rearing of animals and the harvesting of crops.

(b) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other such non-manufacturing activities, and non-processing waste generated at industrial facilities such as office and packing wastes.

(c) "Construction and demolition waste" means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

(d) "Federal facility" means any building, installation, structure, or public work owned by or leased to the Federal Government. Ships at sea, aircraft in the air, land forces on maneuvers, and U.S. Government installations located on foreign soil are not considered "Federal facilities" for the purpose of these guidelines.

(e) "Food waste" means animal and vegetable residues resulting from the handling, storage, sale, preparation, cooking, and serving of foods; commonly called garbage.

(f) "Generation" means the act or process of producing solid waste.

(g) "Hazardous wastes" means any waste or combination of waste which pose a substantial present or potential hazard to human health or living organisms because such wastes are nondegradable or persistent in nature or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects.

(h) "Industrial solid waste" means solid waste that results from industrial processes and manufacturing.

(i) "Infectious waste" means: (1) Equipment, instruments, utensils, and fomites (any substance that may harbor or transmit pathogenic organisms) of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by public health agencies; (2) laboratory wastes, such as pathological specimens (e.g., all tissues, specimens of blood elements, excreta, and secretions obtained from patients or laboratory animals) and disposable fomites attendant thereto; (3) surgical operating room pathologic specimens and disposable fomites attendant thereto and similar disposable materials from outpatient areas and emergency rooms.

(j) "Institutional solid waste" means solid wastes originating from educational, health care, correctional, and other such facilities.

(k) "Mining wastes" means residues which result from the extraction of raw materials from the earth.

(l) "Pyrolytic gas and oil" means gas or liquid products that possess usable heating value that are recovered from the heating of organic material (such as that found in solid waste), usually in an essentially oxygen-free atmosphere.

(m) "Recoverable resources" means materials that still have useful physical or chemical properties after serving their original purpose and can, therefore, be reused or recycled for the same or other purposes.

(n) "Recovery" means the process of obtaining materials or energy resources from solid waste.

(o) "Recycled material" means a material that is utilized in place of a primary, raw, or virgin material in manufacturing a product.

(p) "Recycling" means the process by which recovered materials are transformed into new products.

(q) "Residential solid waste" means the garbage, rubbish, trash, and other solid waste resulting from the normal activities of households.

(r) "Resource recovery facility" means any physical plant that processes residential, commercial, or institutional solid wastes biologically, chemically, or physically, and recovers useful products, such as shredded fuel, combustible oil or gas, steam, metal, glass, etc. for recycling, and which creates a relatively inert process residue for disposal.

(s) "Sludge" means the accumulated semiliquid suspension of settled solids deposited from wastewaters or other fluids in tanks or basins. It does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved materials in irrigation return flows or other common water pollutants.

(t) "Solid waste" as defined in the Solid Waste Disposal Act, as amended, "means garbage, refuse, sludges, and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agriculture operations, and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flow or other common water pollutants." However, unless specifically noted otherwise, the term "solid waste" as used in these guidelines shall not include mining, agricultural and industrial solid wastes; hazardous wastes; sludges; construction and demolition wastes; and infectious wastes.

(u) "Tons per day" means annual tonnage averaged over a 260 day period.

Subpart B—Requirements and Recommended Procedures

§ 245.200 Establishment of resource recovery facilities.

§ 245.200–1 Requirements.

(a) A Federal facility that generates, collects, or disposes of 100 tons or more per day of residential, commercial, or institutional solid waste shall establish and/or utilize resource recovery facilities to separate and recover materials or energy or both from this solid waste.

(b) If any one Federal facility within a Standard Metropolitan Statistical Area (SMSA) generates 50 tons or more of residential, commercial, or institutional solid waste per day, and if the combined total of this solid waste for all Federal facilities within the SMSA is 100 tons or more per day, all Federal facilities within that SMSA shall establish and/or utilize a single resource recovery facility to separate and recover materials or energy or both from this solid waste. The agency that generates the largest quantity of residential, commercial, and institutional solid waste in the SMSA

shall be designated the lead agency in the resource recovery facility planning process. The lead agency shall be responsible for planning, organizing, and managing the joint resource recovery activities of the agencies in the SMSA, and shall report the compliance decision of the agencies in the SMSA in accordance with § 245.100 (f) or (g), as appropriate, in a consolidated report. All other agencies in the SMSA shall assist in planning such resource recovery activities. The use of the word "single" in this paragraph is not intended to preclude the establishment of more than one resource recovery facility to be utilized by all Federal facilities in the SMSA when in the opinion of the participating agencies this is the most practical alternative given facility waste generation rates and transportation distances.

(c) Agencies shall consult with appropriate state and local agencies prior to initiation of market analysis and facility design and construction to determine what effects the project might have on local, regional, and state solid waste management plans for the area and to determine the extent of prior resource recovery planning for the area.

(d) Resource recovery facilities established as a result of these guidelines shall be designed with a capacity sufficient to process at least all of the residential, commercial, and institution solid waste generated by the Federal facilities that will utilize the resource recovery facility.

(e) Resource recovery facilities established as a result of these guidelines shall be designed to process at least 65 percent by wet weight of the input solid waste into recycled material, fuel, or energy. Stated conversely, the weight of the unmarketable residue shall be no more than 35 percent by wet weight of the input solid waste.

(f) Exceptions may be made to §§ 245.200–1 (a) and (b) when after appropriate analysis it is determined that markets for recovered products are not available or that the operating cost of the resource recovery system would be more than two times the cost of complying with the provisions of the "Land Disposal and Thermal Processing Guidelines" (40 CFR 240 and 241) or more than two times the price paid for comparable service, if service is handled under contract. This recommendation is suggested as a "benchmark" to use in judging whether or not to proceed into a resource recovery system.

(g) Agencies that make the determination not to comply with these guidelines must conduct the required analysis every three years and report the decision resulting from this analysis to the Administrator in accordance with § 245.100 (f) or (g), as appropriate.

§ 245.200–2 Recommended procedures: regionalization.

(a) Federal facilities within the same geographical area should agglomerate their solid waste and enter into joint resource recovery ventures with adjacent communities and Federal facilities in order to maximize economies of scale.

(b) If a community adjacent to a Federal facility operates a resource recovery facility, the Federal facility should utilize that resource recovery facility for its solid waste if the adjacent community is willing to accept the solid waste at a price no greater than the cost that the Federal facility would bear if it constructed its own facility.

§ 245.200–3 Recommended procedures: market study.

Preceding the selection of a specific resource recovery technology, an investigation of markets should be made and should include at a minimum:

(a) Identifying potential purchasers of recycled materials by locating the following within the Federal facility or within a reasonable distance.

(1) For ferrous metals: Scrap metal dealers; steel mills; detining companies; copper mining companies; foundaries; ferroalloy producers.

(2) For non-ferrous metals: Aluminum companies; scrap metal dealers; secondary smelters; non-ferrous metal processors.

(3) For paper: Paper stock dealers; paper manufacturing companies; roofing paper manufacturers and manufacturers of other construction materials which utilize paper.

(4) For glass: Glass container manufacturers; aggregate users (construction industry and road bed uses).

(5) For energy: Electric utilities; district heating utilities; industrial users of energy; Federally-owned or operated steam or steam-electric generators.

(b) Contacting buyers directly, and if possible presenting samples of the material similar to that which will be produced by the recovery facility. Determining the form, shape, quantity, or purity of recovered materials which the potential buyers require.

(c) Determining the price that the buyer will pay for the recovered material and how that price will vary; and the potential for a long term contract for the purchase of the material at a guaranteed minimum price.

§ 245.200–4 Recommended procedures: product recovered.

(a) At a minimum, markets and technologies relative to the following potential products from resource recovery systems should be evaluated.

(1) *Market Products*
(i) Ferrous metals
(ii) Glass
(iii) Non-ferrous metals
(iv) Paper fiber
(2) *Energy Products*
(i) Steam
(ii) Solid fuel
(iii) Pyrolytic gas
(iv) Pyrolytic oil
(v) Methane
(vi) Electricity

§ 245.200–5 Recommended procedures: planning and technology selection.

To determine the methods to be used for the recovery of resources from the solid waste, planning and analysis should proceed in a thorough and orderly manner. Planning and analysis should be conducted by members of the agency who are responsible for solid waste management and resource recovery or by the agency's designees who may be professional consultants with knowledge in solid waste and resource recovery. Planning and analysis should include as a minimum the following steps:

(a) Gathering of data on solid waste generation, including quantity, composition, seasonal fluctuation, and projected growth.

(b) Determination of present and projected costs for complying with the provisions of the "Thermal Processing and Land Disposal of Solid Waste Guidelines" and projected availability of sites for facilities.

(c) An analysis of available recovery technologies including: the extent to which technical feasibility has been proven in operations of pilot plant scale or larger, the physical and chemical characteristics of the products the various technologies produce, and the projected capital and operating costs for a plant of sufficient scale to process the waste quantities determined under § 245.200–5(a).

(d) In conjunction with the review of technologies, the markets for recycled materials should be evaluated in the manner described in § 245.200–3.

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